



Item # 7

**Financial and Administrative Services
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA DATE: 4/6/2006
ITEM NO:**

Subject: Approve a resolution authorizing negotiation and execution of an amendment to the Agreement Regarding Escrow of Bond Proceeds with Northtown Municipal Utility District (MUD) and Continental Homes of Texas, LP. (Continental), extending the deadline for completion of certain road and bridge improvements in the MUD; authorizing Continental to receive Series 2006 Northtown Municipal Utility District Unlimited Tax and Revenue Bond proceeds in accordance with the Utility Construction Agreement between Continental and the MUD.

Amount and Source of Funding: The City is not responsible for payment of District bond debt service unless the District is dissolved under the terms of the Consent Agreement.

Fiscal Note: There is no unanticipated fiscal impact. A fiscal note is not required.

Requesting Department: ACM-FASD

For More Information: Kim Holderread, Financial Services 974-7887, David Lloyd, Law Department, 974-2918

Prior Council Action: Northtown Municipal Utility District Unlimited Tax and Revenue Bonds Series 2006 approved 2/16/2006

Boards and Commission Action:

Purchasing Language:

MBE/WBE:

An amendment to the Agreement Regarding Escrow of Bond Proceeds between the City, Northtown MUD and Continental Homes, is required to update the Agreement and make it consistent with the amended Utility Construction Agreement (UCA) between Northtown MUD and Continental Homes. Previously, the UCA established a deadline of January 1, 2006, for completion of sidewalk, road and bridge improvements along Harris Ridge Boulevard (Harris Ridge Improvements). A recent UCA Amendment extended the deadline for completion of the roadway improvements to December 30, 2006.

Approval of this Item will extend the deadline for completion of the Harris Ridge Improvements consistent with the Continental/MUD UCA, and allow the MUD to disburse bond proceeds to Continental. Fiscal security has been posted with the City in an amount sufficient to allow the City to complete the improvements, if Continental fails to meet the new deadline.

RESOLUTION NO.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the City Manager is authorized to negotiate and execute an amendment to the Agreement Regarding Escrow of Bond Proceeds between the City of Austin, Northtown Municipal Utility District, and Continental Homes of Texas, L.P., in substantially the form attached as Exhibit A.

ADOPTED: _____, 2006

ATTEST: _____

Shirley A. Gentry
City Clerk

“EXHIBIT A”

**AMENDMENT NO. 1 TO
AGREEMENT REGARDING ESCROW OF BOND PROCEEDS**

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

THIS AMENDMENT NO. 1 TO AGREEMENT REGARDING ESCROW OF BOND PROCEEDS (“Agreement”) is made and entered into as of the _____ day of April, 2006, by and between NORTHTOWN MUNICIPAL UTILITY DISTRICT, a political subdivision of the State of Texas (the “District”), CONTINENTAL HOMES OF TEXAS, L.P., a Texas limited partnership d/b/a Milburn Homes (“Continental”), and THE CITY OF AUSTIN, a Texas home-rule municipality (the “City”).

RECITALS:

A. On or about August 28, 2003, the District, Continental and the City entered into an “Agreement Regarding Escrow of Bonds Proceeds” (the “Agreement”) which, among other things, obligated Continental to perform specified obligations (the “Funding Obligations”) set forth on Exhibit C to the Agreement as a condition of receiving certain proceeds from the sale of the District’s \$3,770,000 Unlimited Tax and Revenue Bonds, Series 2003 (the “2003 Bonds”).

B. Continental performed the Funding Obligations, and the proceeds of the 2003 Bonds payable to Continental were released and paid to Continental with the approval of the District and the City.

C. As contemplated by Exhibit C to the Agreement, Continental and the District previously entered into an “Amendment No. 2 to Utility Construction Agreement Between Northtown Municipal Utility District and Continental Homes of Texas, L.P.” dated March 23, 2004 (the “UCA Amendment”), which provides, among other things, that the Sidewalk Improvements, Pedestrian Underpass, Harris Ridge Bridge and the extension of Harris Ridge Boulevard, as described in the UCA Amendment (the “Roadway and Sidewalk Improvements”), were to be completed by Continental by January 1, 2006.

D. Continental was unable to complete the Roadway and Sidewalk Improvements by January 1, 2006, and the District and Continental have now entered into an “Amendment No. 3 to Utility Construction Agreement” dated March 1, 2006, extending the date for completion to December 30, 2006.

E. Continental and the District have requested that Exhibit C to the Agreement be amended to reflect the extended completion date for the Roadway and Sidewalk Improvements, and the City is willing to agree to such amendment.

WITNESSETH:

In consideration of the premises, and the other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, the District and Continental agree as follows:

1. Amendment to Exhibit C. Paragraph 6.b. of Exhibit C--Conditions to release of Escrow--to the Agreement is amended to read as follows:

b. Continental must construct the Sidewalk Improvements and the Pedestrian Underpass at the time of the extension of Harris Ridge Boulevard and construction of the Harris Ridge Bridge, and in any case must complete all of such construction no later than December 30, 2006. Continental acknowledges that the construction of Harris Ridge Boulevard from Howard Lane along the entire length of the property covered by the Plats to the adjoining property line and the construction of Harris Ridge Bridge, the Pedestrian Underpass and the Sidewalk Improvements are essential to provide adequate vehicular and pedestrian access to the Parkland, and that the District will incur actual damages in the event Continental fails to comply with its obligations to complete these improvements due to the resulting lack of accessibility and utility of the Parkland to the District and its residents. The District will waive any tap fees associated with the meter for the irrigation for the Sidewalk Improvements.

2. Defined Terms. All terms delineated with initial capital letters in this Amendment that are defined in the Agreement have the same meanings in this Amendment as in the Agreement. Other terms have the meanings commonly ascribed to them.

3. Counterparts. This Amendment may be executed by facsimile, which will have the same effect as an original signature, and in one or more counterparts, each of which shall be an original, but all of which taken together will constitute a single document.

4. Effect of Amendment. Except as specifically provided in this Amendment, the terms of the Agreement continue to govern the rights and obligations of the parties, and all terms of the Agreement remain in full force and effect. If there is any conflict or inconsistency between this Amendment and the Agreement, this Amendment will control and modify the Agreement.

NORTHTOWN MUNICIPAL UTILITY
DISTRICT

By: _____
Texana Kowis, President
Board of Directors

Date: _____

ATTEST:

Brenda Richter, Secretary
Board of Directors

**CONTINENTAL HOMES OF TEXAS, L.P., a
Texas limited partnership**

**BY: CHTEX OF TEXAS, INC., a Delaware
Corporation, General Partner**

By: _____
Name: _____
Title: _____
Date: _____

THE CITY OF AUSTIN

By: _____
Name: _____
Title: _____
Date: _____